

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

APR 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	CC Docket No. 96-45
)	
Federal-State Joint Board on)	
Universal Service)	
)	
Petition of the State of Alaska)	
for Waiver for the Utilization of Schools and)	
Libraries Internet Point-of-Presence in Rural)	
Remote Alaska Villages Where No Local)	
Access Exists and Request for Declaratory)	
Ruling)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

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April 6, 2001

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**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Commission’s Public Notice¹ regarding the above captioned Petition of the State of Alaska (“Alaska Petition”). In its petition, the State of Alaska requests a waiver of the Commission’s rules to allow provision of Internet access to unserved communities in rural Alaska through E-rate subsidized school or library “points of presence.” Although ITTA commends Alaska for its efforts to bring Internet service to rural communities, ITTA is concerned that Alaska’s petition lacks critical detail and, as written, therefore may threaten the integrity of the E-rate program. Alaska’s proposal also may violate the principle of competitive neutrality. In the event that the Commission grants the Petition, the public interest requires that the services proposed under the Petition be open to competition.

¹ *Public Notice*, DA 01-584, released March 7, 2001.

I. BACKGROUND

ITTA has a substantial interest in this proceeding because the issues raised are of critical importance to the future operation of the E-rate program in Alaska and the scores of additional rural communities throughout the United States that ITTA members serve. ITTA is an organization of midsize incumbent local exchange carriers (“LECs”) each of which, together with its affiliates, serves fewer than two percent of the nation’s subscriber lines. ITTA members collectively provide local exchange and exchange access service to over nine million lines in forty states, including Alaska, and offer a wide variety of services to customers, as incumbents and as competitive LECs. ITTA members also offer interexchange service, commercial mobile radio services, and information services, including both dial-up and dedicated, high-speed Internet access services. ITTA’s smallest member company serves just under 100,000 subscriber lines while its largest serves over two million.

II. THIS IS NOT THE PROPER FORUM TO CONSIDER HIGH COST SUPPORT FOR INTERNET SERVICES

The Alaska Petition requests that the Commission allow E-rate subsidized facilities to be used to provide Internet connectivity to rural communities. ITTA agrees that such access would greatly benefit rural communities, but does not believe that a petition for waiver is the proper vehicle to decide the overarching question of whether universal service mechanisms should be used to achieve this goal. The Commission has already determined as a general matter not to designate Internet service connectivity for universal service support.² Further, the issue of rural access to Internet services is currently under review by the Commission in several

² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 83 (1997) (subsequent history omitted).

proceedings much more suited to formulating a comprehensive solution to this issue.³ Because the underlying issues presented in the Alaska Petition are of national significance and are under consideration in other proceedings, ITTA submits that this is not the proper forum to determine whether and to what extent universal service mechanisms should support Internet services to rural communities.⁴

III. THE ALASKA PETITION LACKS SAFEGUARDS NECESSARY TO PROTECT THE INTEGRITY OF THE E-RATE PROGRAM

The Alaska Petition lacks critical detail on a number of issues that, taken together, may jeopardize the integrity of the E-rate program. In particular, the Petition glosses over the telecommunications carrier's role and obligations in providing services under the E-rate program. While the Petition explicitly states that the school or library will not receive compensation for community use of the E-rate funded facilities, it is unacceptably vague with regard to whether and what amount a carrier or Internet service provider ("ISP") will charge the

³ For example, the Commission is currently considering the Recommendation of the Federal-State Joint Board on Universal Service and the Rural Task Force relating to high-cost support for rural telephone companies, in which the Rural Task Force recommends that the list of supported services include access to information services at a rate that is reasonably comparable to that provided in rural areas. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket NO. 96-45, Further Notice of Proposed Rulemaking, FCC 01-8 (released January 12, 2001).

⁴ Further, Section 706 of the Telecommunications Act of 1996 requires the Commission to review periodically whether deployment of advanced telecommunications capability to all Americans is proceeding in a reasonable and timely fashion. The Commission completed its Second Report in August 2000 and found that deployment of advanced services, for the most part, met this standard. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, FCC 00-290 (released August 21, 2000). Contrary to this finding, the Alaska Petition suggests that universal service support is needed in Alaska to allow deployment even of dial-up Internet access, let alone access to advanced services, to proceed in a reasonable and timely fashion. If the Commission ultimately grants the Alaska Petition, therefore, it should immediately notify Congress of this determination and take whatever additional steps are statutorily required to allow deployment to proceed in such a way as to remove barriers to infrastructure investment and "promot[e] competition in the telecommunications market." Telecommunications Act of 1996, P.L. 104-104, § 706 (codified at 47 U.S.C. §157 note).

rural residents that avail themselves of the Internet access services that are provided using federally supported facilities.

Most troubling, the Alaska Petition, if granted, would seem to allow a carrier to effectively sell E-rate subsidized Internet services twice: once to the schools and libraries and then a second time to customers throughout the community. This ability to double-sell services—at rates well below market-based levels—would prevent any other provider from competing against the carrier providing subsidized services to the school or library. Further, the ability to double-sell services may lead to cross-subsidization of Internet service to the communities using E-rate funds. As a result, under the Alaska Petition, an E-rate subsidized carrier could reap windfall profits and preclude competitive entry. Such a result would violate Section 254(h)(3)⁵ and possibly Section 254(k) of the Communications Act of 1934, as amended (“Act”).⁶

Additionally, while the Alaska Petition claims that the expanded use of subsidized facilities would not result in additional cost to the E-rate program, it offers no assurance of this claim and provides no safeguards that would protect the integrity of the program. Indeed, without such safeguards, the Alaska Petition leaves open several avenues for abuse that place the E-rate program at risk. First, a carrier may over-sell capacity to the schools and libraries in order to maximize the carrier’s ability to resell those services for evening and weekend use by rural households. In the alternative, the communities themselves may pressure the schools and libraries to over-estimate their needs. Either way, there will be great incentive to misallocate

⁵ Although the Alaska Petition states that the service will be sold by the service provider, and not by the affected end-user school or library, the Alaska Petition does not indicate what, if any, compensation may flow between the service provider and the school or library it serves as a result of this waiver.

additional facilities and services to the E-rate program in an effort to ensure sufficient capacity for commercial use within the community. The Alaska Petition already outlines plans for provision of additional equipment that it claims, with scant detail, will not affect the cost of the E-rate program. In sum, the Alaska Petition fails to explain how the state intends to prevent services offered under this waiver from inflating the cost of the E-rate program.

It is also unclear how this waiver would affect the prices offered to schools and libraries. Any such price changes would, of necessity, affect demand for E-rate services. Until the impact on demand and pricing is fully explored, one cannot predict what the overall costs of Alaska's proposal will be.

Schools and libraries also may suffer from degraded service due to the increased use of equipment and facilities. The Commission should reject any use of E-rate funded facilities that may endanger the quality of service provided to schools and libraries. Under the Alaska Petition, much more will be demanded of existing facilities. Rather than operating only during school and library hours, the E-rate funded facilities will be required to carry a substantial amount of additional traffic and to operate on weekends and evenings. This increased burden on facilities could degrade service and cause E-rate subsidized facilities to require more frequent maintenance and repair, further raising costs.

For each of the above reasons, the Alaska Petition fails to demonstrate that the requested relief will not violate Section 254. Before such a petition may be granted, it should more clearly describe the proposed use of E-rate facilities and services so the Commission may

⁶ 47 U.S.C. §§ 254(h)(3), 254(k).

avoid approving a program that results in misallocation of E-rate funds, inflation of E-rate costs, and degradation of service to schools and libraries.

IV. THE PETITION MUST BE CLARIFIED TO FOSTER, NOT PRECLUDE, FUTURE COMPETITION

If the Commission grants the Alaska Petition, it should require nondiscriminatory access to all facilities used to access the Internet in this manner. In doing so, the Commission can guard against the danger of federal support being used for arrangements that are not subject to competitive forces.

The Commission should not grant a waiver that will give one ISP (which alone would be able to leverage federally-subsidized Internet connectivity) a legally-sanctioned competitive advantage. Although lack of Internet connectivity in communities where no toll-free or local dial-up Internet access is currently available is of serious concern to ITTA, creating such a provider could violate the Commission's universal service principle of competitive neutrality.⁷ Such a provider could take unique advantage of the price umbrella created by higher-cost, non-local ISPs to reap windfall profits at the expense of local residents and the federal support program. Therefore, if the Commission grants this waiver, it should also require any provider or community seeking to take advantage of this relief to grant nondiscriminatory access to all facilities used to connect subscribers to the Internet in this manner. Non-discriminatory access to these facilities (and the opportunity to serve customers in these communities) will help keep downward pressure on rates and stimulate growth of services to these markets.

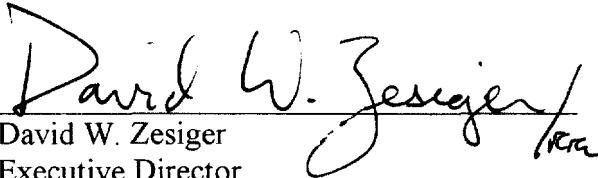
⁷ Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd at 8801, para. 47.

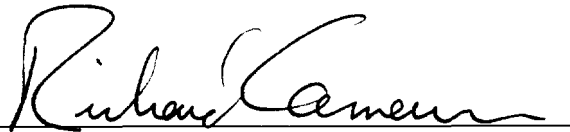
V. CONCLUSION

As currently presented, the Alaska Petition leaves open too many issues that may allow for a violation of principles that could jeopardize the integrity of the E-rate program. Therefore, until additional detail and clarification is provided, ITTA cannot support the Alaska Petition. If, however, the Commission grants the Alaska Petition, such grant should require the carrier receiving the E-rate subsidy to allow open, nondiscriminatory access to all facilities used to access the Internet in this manner.

Respectfully submitted,

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